

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1316 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RAJUBHAI PRAHLADBHAI MORE

Versus

COMMISSIONER OF POLICE

Appearance:

MR NM KAPADIA for Petitioner

SERVED for Respondent No. 1

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 26/06/96

ORAL JUDGEMENT

Dilipbhai Prahaladbhai More (hereinafter referred to as "the detenu"), who is the brother of the petitioner, is detained vide order dated 21-11-1995 passed by Commissioner of Police (hereinafter referred to as "the detaining authority ") under section 3 (1) of the Gujarat Prevention of Anti Social Activities Act (hereinafter referred to as "the PASA Act"). The

petitioner has, therefore, by way of the present petition under Article 226 of the Constitution of India, challenged the said order of his brother's detention dated 21-11-1995.

In the grounds of detention supplied to the detenu, the detaining authority has placed reliance on three criminal cases being C.R.No.135/94, C.R.No. 145/95 and C.R.No.146/95 for offences under sections 324, 114, 364, 323, 506(2), 34, 452, 427 and section 294 (b) of the Indian Penal Code registered against the detenu with Udhna Police Station . Besides these criminal cases, further reliance is placed on the statements of three witnesses for the alleged incidents which took place on 14-5-95, 27-5-95 and 7-6-95 wherein the detenu is alleged to have extorted money at the point of knife from the witnesses and by beating them. Considering these materials, the detaining authority was of the view that the detenu is a "dangerous person " within the meaning of section 2 (c) of the PASA Act and with a view to preventing the detenu from acting in any manner prejudicial to the maintenance of public order, it was necessary to pass the order of detention against him and, therefore, the impugned order is passed, which is under challenge in the present petition.

Since this petition is capable of being disposed off only on the first contention advanced by Mr. N.M.Kapadia, learned Advocate for the petitioner, it is not necessary to refer to and deal with the other contentions advanced by him. Mr. Kapadia invited my attention to the grounds of detention supplied to the detenu. In his submission, the detaining authority has observed that out of three cases registered against the detenu. the detenu has been released on bail in C.R.No.138/95. However, the detaining authority has observed that with respect to the remaining two cases, since the detenu is at present in the Court custody, he is likely to get himself involved in the illegal activities no sooner he is released on bail. Mr.Kapadia submitted that the order of detention was passed on 21-11-95 while the detenu was already released on bail on 19-10-95 with respect to C.R.No. 145/95 by the learned Additional Sessions Judge, Surat. A copy of the said order of bail has been produced by the learned Advocate for the petitioner. Perusing the said order, it appears that on behalf of the detenu, an application for bail with respect to C.R.No. 145/95 was made on 17-10-95 and the learned Additional Sessions Judge granted bail vide his order dated 19-10-95 much prior to the passing of the order of detention against the detenu by the detaining

authority. In view of this factual position, there was total non-application of mind on the part of the detaining authority when he stated that the detenu is in the custody with respect to the offence alleged against him. In view of this, the petition is required to be allowed on this short ground alone.

In the result, this petition is allowed. The impugned order of detention dated 21-11-1995 is quashed and set aside. The detenu Dilipbhai Prahaladbhai More is directed to be set at liberty forthwith if his detention is not required for any other purpose. Rule is made absolute accordingly with no order as to costs.

o-o-o-o-o-o

True copy